

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID K. HUDSON,

Petitioner,

v.

Case Number: 10-cv-11937
Honorable Patrick J. Duggan

CAROL HOWES,

Respondent.

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**OPINION AND ORDER GRANTING PETITIONER'S MOTION FOR
RECONSIDERATION**

On May 13, 2010, Petitioner David K. Hudson, a Michigan prisoner, filed a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his convictions in 1986 for felony murder and felony firearm following a jury trial in the Circuit Court for Oakland County, Michigan. On July 8, 2010, this Court entered an order transferring the petition to the Sixth Circuit Court of Appeals pursuant to 28 U.S.C. § 2244(b)(3)(A) on the belief that it constituted a second or successive petition. On July 19, 2010, Petitioner filed a motion pursuant to Federal Rule of Civil Procedure 60(b) contending that the Court erred when it found that his current petition challenges the same conviction and sentence as a federal habeas petition he previously filed, Case No. 98-71756. Because Petitioner is correct, the Court grants his motion for reconsideration.

Petitioner was convicted of and sentenced for first degree murder and felony firearm in two separate trials— one in the Circuit Court for Oakland County and one in the Circuit Court for Wayne County— based on two murders on January 28, 1984. The

evidence introduced at Petitioner's trials established that, in the evening on January 28, 1984, he and an accomplice shot one woman after she arrived in her car at her home in Detroit and opened the door of her car. *See* 3/7/02 Op. and Order, *Hudson v. Jones*, No. 98-71756 (E.D. Mich.) (Cohn, J.). Petitioner and his accomplice drove away with the victim in the car, a green Chrysler. *Id.* The victim's body was found in an alley near her home later that evening. *Id.* Petitioner and his accomplice then drove to Southfield, where they abducted a woman driving a red Ford automobile. *Id.* The men forced the woman into the trunk of the green Chrysler; one drove away in the Chrysler and the other drove away in the Ford. One of the men shot the woman; she subsequently died of her gunshot wounds. *Id.*; 11/1/07 Op. and Order, *People v. Hudson*, No. 84-062537, at *2 n.2 (Oakland County Cir. Ct.) [Pet. at 27].

On April 23, 1998, Petitioner filed a petition for habeas relief pursuant to 28 U.S.C. § 2254 in which he challenged his convictions in the Wayne County Circuit Court arising out of the murder of the first victim. *Hudson v. Jones*, Case No. 98-71756. That petition was assigned to the Honorable Avern Cohn. Judge Cohn eventually denied Petitioner habeas relief on June 17, 2005. As indicated previously, on May 3, 2010, Petitioner filed the present petition challenging his conviction in the Oakland County Circuit Court arising out of the murder of the second victim.

As Petitioner is challenging separate convictions and sentences in the habeas petition before this Court, the petition is not a second or successive petition. Petitioner, therefore, is not required to request permission from the Sixth Circuit Court of Appeals to

pursue the petition. *See* 28 U.S.C. § 2244(b)(3)(A).

Accordingly,

IT IS ORDERED, that Petitioner's Rule 60(b) motion for relief from judgment is **GRANTED** and the Clerk of the Court shall reinstate the petition in this court.

DATE: August 30, 2010

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copy to:
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